No. 88-88

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

STATE OF ILLINOIS,

Petitioner,

v.

RONALD STRUEBIN, Ancillary Administrator of the Estate of Joel F. Struebin, Deceased; KATHLEEN S. POTTER, Ancillary Administrator of the Estate of James K. Potter; and DAVENPORT BANK AND TRUST, Ancillary Administrator of Both Estates,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

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QUESTIONS PRESENTED

Whether a state, acting through its judiciary, may seize income tax revenue of a sister state collected by and temporarily in the possession of a private corporation in order to satisfy a judgment against the sister state in favor of its domiciliary.

Whether this Court's decision in *Nevada v. Hall* should be reconsidered.

LIST OF PARTIES BELOW

The State of Illinois

Ronald Struebin, Ancillary Administrator
of the Estate of Joel F. Struebin;
Kathleen S. Potter, Ancillary Administrator
of the Estate of James K. Potter;
Davenport Bank and Trust, Ancillary Administrator
of both Estates

Caterpillar Tractor Company

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

The Petitioner, State of Illinois, respectfully prays that a Writ of Certiorari issue to review the final decision and opinion of the Supreme Court of the State of Iowa entered in this proceeding on April 13, 1988.

OPINION BELOW

The opinion of the Supreme Court of Iowa is reported under the name *Ronald Struebin, et al. v. State of Illinois*, at 421 N.W.2d 874 (Iowa 1988). A copy of that opinion is also contained in the Appendix to this Petition, at Appendix A.

JURISDICTION

The opinion of the Supreme Court of Iowa was entered on April 13, 1988. This Petition for Writ of Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION

Article IV, Section 1

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

STATEMENT OF CASE

In December of 1978, Respondents' decedents were driving their jeep across a bridge traversing the Mississippi River and connecting the states of Iowa and Illinois. The vehicle left the roadway and plunged from the surface of the bridge into the river.

In April of 1980, the Respondents' estates filed a wrongful death action, in Iowa, against the manufacturer of the vehicle, alleging, *inter alia*, faulty design and manufacture of the product. In a separate suit, Respondents sued the State of Iowa for its alleged failure to maintain properly the road surface of the bridge. Iowa successfully

moved to join the State of Illinois in the litigation, presumably because of a certain interstate compact between Iowa and Illinois whereby Illinois agreed to maintain the Iowa portion of the Interstate 80 bridge spanning the river. Iowa then settled with the Respondents and was dismissed from the suit.

Illinois filed a special appearance in the Iowa trial court which the State of Iowa, prior to settlement, resisted. The trial court rejected Illinois' assertion that, as a sovereign state, it was immune from suit in Iowa. In a decision reported as *Struebin v. State of Iowa and State of Illinois*, 322 N.W.2d 84 (Iowa 1982) (Appendix B) the Iowa Supreme Court affirmed, holding that Iowa's assumption of jurisdiction over the State of Illinois did not constitute a substantial threat to cooperative federalism. It relied on this Court's decision in *Nevada v. Hall*, 440 U.S. 410, 99 S. Ct. 1182, 59 L.Ed.2d 416 (1979), observing that *Hall* "does not suggest that an exception must be made where, as here, a threat to interstate cooperation is asserted." Appendix B, at 5. Illinois' Petition for Writ of Certiorari was denied by this Court. *State of Illinois v. Struebin, et al.*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982).

The case proceeded to trial with the Respondents contending that Illinois negligently conducted snow removal operations undertaken pursuant to the interstate agreement. The jury found Illinois partially liable, found Jeep not guilty, and found Respondents' decedents 70% at fault.

No party appealed the jury verdict, and Respondents took no steps to collect the judgment from Illinois until March of 1984, when Respondents instituted the garnishment proceeding that is the subject of the present petition. Specifically, Respondents sought to collect their judgment against Illinois by garnishing Illinois income tax with-

held by Caterpillar Tractor Company (an Illinois corporation doing business in Iowa) on behalf of those Caterpillar employees who worked in Iowa but resided in Illinois.

Illinois again appeared specially, contending, *inter alia*, that garnishment by Iowa of Illinois income tax revenue constituted a substantial threat to cooperative federalism. The trial court upheld the special appearance. The Iowa Supreme Court did not rule on the merits of this question. Instead, it held that, ". . . as a matter of comity and cooperative federalism, we will not open our courts to consider [Respondents'] proceedings to collect the judgments by garnishment in Iowa until such time as they can allege and prove they were unable to secure payment of these judgments in the Illinois courts." *Struebin v. Illinois*, 383 N.W.2d 516 (1986). (Appendix C, at 9).

Because Illinois is immune from suit in its trial courts of general jurisdiction, Respondents filed suit in the Illinois Court of Claims, a forum analogous to the federal Court of Claims. That body found that Respondents' Petition to Enforce Judgment was not timely filed. As a result, the case found its way to the Iowa Supreme Court for a third time.

This time, the court decided the central question in the litigation—whether a co-equal sovereign can seize the property of another sovereign. It answered in the affirmative, finding that this Court's decision in *Hall* controlled. It found that:

> In this case the governmental authority of Illinois is not being litigated. We are not addressing the issue of whether Illinois can deny Respondents relief in its own court of claims. Rather, we are allowing our own courts to enforce a judgment entered in this state. *The only potential threat to cooperative federalism in this case is the claim that Iowa cannot enforce its own judgments.*

(Appendix A, at 6 [emphasis supplied].) Because Illinois believes that its governmental authority is being litigated, and that the seizure of its income tax by a sister state does constitute a threat to interstate cooperation, Illinois asks this Court to grant the present petition.

REASONS FOR GRANTING THE WRIT

I.

THE COURT BELOW BOTH MISINTERPRETED AND MISAPPLIED THIS COURT'S DECISION IN *NEVADA v. HALL.*

Historically, this Court has found it appropriate to review state court decisions to determine whether its prior decisions have been properly applied, interpreted, or extended. See *Bullington v. Missouri*, 451 U.S. 430, 432, 101 S.Ct. 1852, 68 L.Ed.2d 270 (1981). In the present action, the court below consistently has misinterpreted this Court's decision in *Nevada v. Hall* in several specific ways, and in general by incorrectly extending that decision to the factual and public policy conditions present in the case before it.

In *Nevada v. Hall*, this Court considered for the first time whether a state could claim immunity from suit in the courts of another state. The Court's analysis was governed by the full faith and credit clause, and by contemporary notions of comity.

The Court first ruled that the full faith and credit clause did not require California to refrain from exercising jurisdiction over Nevada on the basis of sovereign immunity when to do so would offend California's own policies of

full recovery for motorists against all tortfeasors, including the government of California and its agents. This ruling was grounded in historical notions of the territorial limits of a state's power.

> Full faith and credit . . . does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it.

Id., at 423, 424, 99 S.Ct. at 1190 (quoting *Pacific Insurance Co. v. Industrial Accident Commission*, 306 U.S. 493, 504-505, 59 S.Ct. at 634 (1939)). Given that this was the first occasion for the Court to consider such an important question, it carefully limited its holding to the facts and state policies before it.

> California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism. Suits involving traffic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfill its own sovereign responsibilities. We have no occasion, in this case, to consider whether different state policies, either of California or of Nevada, might require a different analysis or a different result.

Id., at 424, n. 24, 99 S.Ct. at 1190.

In *Hall*, California had waived its immunity from suit in its own courts in favor of a policy of full recovery for its citizens. Nevada had a *different* policy, in the form of a statutory limit on the amount of money damages available against Nevada in Nevada courts. Analogizing from worker's compensation choice of law precedents, the *Hall* Court found that California was not required to give full faith and credit to a sister state policy obnoxious to its own policies of jurisdiction over nonresident motorists and full recovery.

Unlike *Hall*, the policies of Iowa and Illinois are the *same*: neither state permits execution on government property to satisfy judgments against the state. Iowa statutes expressly exempt from execution public buildings or property owned by the state. Iowa Code, §627.18. Iowa statutes also provide that "[t]he property of a private citizen can in no case be levied on to pay the debt of [a public body]." *Id.* Similarly, Illinois cannot be made a party in suits brought in Illinois courts of general jurisdiction. Actions against the State must be brought in the Illinois Court of Claims. Ill.Rev.Stat. 1987, ch. 127, ¶801. The prohibition is equally applicable in the garnishment context. *Aurora National Bank v. Simpson*, 118 Ill.App.3d 392, 454 N.E.2d 1132 (1st Dist. 1983).

The lower court's decision here interferes with and offends the structure of Illinois government as created by its constitution. Article IX, Section 1 of the Illinois Constitution of 1970 places the power to raise revenue exclusively with the legislature. Article VIII, Section 2(b) provides that "[t]he General Assembly by law shall make appropriations for all expenditures of public funds by the State." Those appropriations cannot exceed estimated available funds. *Id.* The constitution also abolishes Illinois' sovereign immunity, "except as the General Assembly may provide by law." Ill. Constitution of 1970, art. XIII, §4. By enactment of the legislature, Illinois cannot be made a party "in any court" other than the Illinois Court of Claims. Ill.Rev.Stat. 1987, ch. 127, ¶801. Taken together, these provisions place the sole authority to appropriate and distribute Illinois revenue in the Illinois legislature.

Distribution of that revenue by the courts of another state is outside of and not contemplated by Illinois' constitution and laws. Put simply, Illinois has no mechanism

for the distribution of revenue other than by its duly elected legislature. Neither its appropriation and budgeting process nor its auditing procedures contemplate seizure and distribution of its property by a foreign state. Because Illinois property, of necessity, frequently will be located in other states (see Reason III, *infra*), the seizure of that property by foreign states will have dramatic and unpredictable effects on Illinois government.

Neither Iowa nor Illinois permits execution on state property either directly, or, as here, against a private party, to satisfy a judgment against the state. Thus the policies of both states are the same. A correct application of *Hall* to the facts and policies of this case mandates that Iowa give full faith and credit to Illinois' policy prohibiting execution against a sovereign.

The second way in which the lower court misinterpreted this Court's decision in *Hall* concerns the question of whether the assumption of jurisdiction of the underlying suit by Iowa over Illinois would constitute a "substantial threat to cooperative federalism". *Id.* at 423, n. 24, 99 S.Ct. 1190. In *Hall*, the Court observed that "[s]uits involving traffic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfill its own sovereign responsibilities." *Id.* There, a California jury was asked to decide whether an agent of Nevada operated his car in a careful and prudent manner, common law duties owed by each citizen to the public at large. Here, an Iowa jury was asked to decide whether Illinois performed a sovereign function—removing snow from public roadways—in a prudent manner. In essence, Illinoisans' tax dollars were disbursed by Iowa residents and the Iowa judiciary for conduct that only Illinois government could perform. The *Hall* Court had no occasion to consider the application of the full faith and credit clause

in the context of the policies and governmental conduct at issue in this case.

This case also presents a question which concerned the dissenters in *Hall*: whether Illinois must give full faith and credit to a garnishment of its property by Iowa. The question is important to any private debtor of a state, such as Caterpillar here, who may be obligated to both the garnishment state and to its principal creditor state.

Caterpillar is required under Illinois law to withhold income tax from its employees' compensation, and becomes personally liable for its failure to remit the tax. Ill.Rev. Stat., 1987, ch. 120, ¶7-705. If the withheld tax is garnished in Iowa, and if Illinois does not give full faith and credit to the Iowa garnishment proceeding because the seizure of its property offends its public policy, Caterpillar could be liable in two different states for the same obligation in violation of its right to due process of law.

The final, and possibly most basic, misinterpretation of *Nevada v. Hall* by the court below is its failure to distinguish the choice of law aspects of *Hall* concerning the assumption of jurisdiction in the first instance from the full faith and credit question in the enforcement of judgments context—an issue squarely present in this case in its present posture. Petitioner has found no precedent in any state establishing that non-wage property of a state is subject to execution.[1] The question of whether a state may seize the property of a sister state was not decided

[1] The rule is well established that funds or credits of a public body exercising governmental functions acquired by it in its governmental capacity cannot be reached by execution or by garnishment served upon the debtor or depository of the public body. See, 89 A.L.R. 863 (1931); 6 Am.Jr.2d Attachment and Garnishment, Section 78. This rule is followed today by the courts of vir-

(Footnote continued on following page)

in *Hall*, but must be decided here. The answer will govern interstate relations at a fundamental level. The court below construed *Hall* to permit such execution in the face of overwhelming nationwide precedent to the contrary.

II.

THE SEIZURE OF ILLINOIS' PROPERTY BY A SISTER STATE SUBSTANTIALLY INTERFERES WITH ITS ABILITY TO PERFORM ITS SOVEREIGN GOVERNMENTAL FUNCTIONS.

The power to tax is an incident of sovereignty of all governments indispensable to their very existence. *Union Transit Co. v. Kentucky*, 199 U.S. 194, 26 S.Ct. 36, 50 L.Ed. 150 (1905). At both the state and federal level, the power to appropriate and expend revenue is the peculiar province of the legislative branch of government. *Spencer v. Merchant*, 125 U.S. 345, 8 S.Ct. 921, 31 L.Ed. 763 (1888); *Thompson v. Allen*, 115 U.S. 550, 6 S.Ct. 140, 29 L.Ed. 472 (1885). The Iowa Supreme Court's decision

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[1] *continued*

tually every state. See, *State v. Allred*, 102 Ariz. 102, 425 P.2d 572 (Ariz. 1967); *G & J Investment Corp. v. Florida Department of Health and Rehab. Services*, 429 S.2d 391 (Fla.App. 1983); *Holder v. Citizens & Southern Nat'l Bank*, 222 S.E.2d 110 (Ga. App. 1975); *Weinstein, Bronfin & Heller v. LeBlanc*, 249 La. 936, 192 So.2d 130 (La. 1966); *Mayor and City Council of Baltimore v. Comptroller of Treasury*, 439 A.2d 1095 (Md. 1982); *MacQuarrie v. Balch*, 285 N.E.2d 103 (S.Jud.Ct.Mass. 1972); *Star v. Manufacturing Employees Fed. Cr. U. v. Araujo*, 164 A.2d 309 (R.I. 1960); *Brewington v. Brewington*, 387 S.W.2d 777 (Tenn. 1965); *Delta County Levee Imp. Dist. No. 2 v. Leonard*, 516 S.W.2d 911 (Tex.), *cert. denied* 96 S.Ct. 48 (1974).

States which deviate from the general rule do so only to the extent of permitting garnishment of wages of state employees. *Druid City Hospital Bd. v. Epperson*, 378 So.2d 696 (Ala. 1979); Iowa Code Section 642.2; *Hilton v. Amburgey*, 96 S.E.2d 151 (Va. 1957). None of the states permits garnishment of non-wage state property.

changes this rule in two radical ways. First, it shifts from the legislative to the judicial branch authority for determining how, to whom, and under what circumstances a state's property will be distributed. Second, it permits the courts of one state to make that decision for the legislature of another state.

The judgment state will always have an interest in recovering for its own citizen, and cannot have an interest in the governmental needs, policies, and obligations of the foreign legislature, for the judgment state has no organic authority or competence to distribute the property of a sister state. Yet by garnishing Illinois income tax, the Iowa judiciary in effect is placing itself in the role of a *de facto* Illinois legislature, distributing Illinois tax revenue to particular recipients in a particular manner.

Such action is beyond the power of a state court. The absence of such power is grounded in the territorial limitations of co-equal sovereigns in this federal union. See, *Pennoyer v. Neff*, 95 U.S. 714, 722, 24 L.Ed. at 568 (1878). While noting the gradual erosion of historical restrictions on state power resulting solely from territorial limits of the state establishing the power, this Court has not abandoned all territorial restrictions on the jurisdiction of state courts. "Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states." *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 293, 100 S.Ct. 559, 565 (1980). This case presents a substantial federal question concerning the territorial limits of the jurisdiction of the state courts over sister states.

The precedent established by the lower court decision here also inhibits Illinois' ability to fulfill its governmental functions. The basic factual question in the trial of this

cause was whether Illinois exercised in a negligent manner its governmental obligation of removing snow from a bridge connecting Iowa and Illinois pursuant to an interstate agreement. This question is distinctly different than that presented in *Nevada v. Hall, supra.* The question there was whether a Nevada resident drove his car in California in a negligent manner. By ruling that California could assume jurisdiction over the State of Nevada, this Court presumably determined that it was appropriate for California residents to judge the adequacy of the driving behavior of a citizen of another state, a determination foreshadowed, if not squarely reached, in *Hess v. Pawloski,* 274 U.S. 352, 71 L.Ed. 1091 (1927).

Here, by contrast, the residents of one state determined the adequacy of another state's exercise of a purely governmental function—removing snow from public roadways. Upon what basis could they do so other than standards of conduct demanded by Iowa citizens of their own government? But Iowa residents have no voice in deciding how much Illinoisans should tax themselves in order to buy road equipment or salt, and no voice in whether more or less resources should be committed to other and competing obligations of Illinois government. The government of Illinois simply cannot fulfill its sovereign obligations based upon standards of conduct established or determined by the residents of another state.

III.

A RULE PERMITTING THE SEIZURE OF A STATE'S ASSETS WHEREVER A DEBT IS OWED THAT STATE BY A DEBTOR OVER WHOM THE FORUM STATE MAY ASSERT PERSONAL JURISDICTION POSES A SUBSTANTIAL THREAT TO COOPERATIVE FEDERALISM.

Respondents seek to garnish Illinois income tax withheld by Caterpillar Tractor Company on behalf of Illinois resi-

dents employed by Caterpillar in its facility located in Iowa. Caterpillar is an Illinois corporation. The opinion below sanctions this method of enforcing a judgment against a sister state. The precedential effect of this ruling is to permit the seizure of Illinois property in any state in which a private party is obligated to Illinois.

Illinois property will at times and of necessity be located outside its territorial borders. Illinois residents employed in other states will, as here, be liable for income taxes. Those taxes will be collected by both foreign and Illinois domestic corporations. Illinois employs revenue agents physically located in and residents of other states who temporarily possess tax money owed to Illinois. Foreign corporations doing business in Illinois owe various kinds of income or franchise taxes to this state as a condition precedent to conducting business in Illinois. Illinois' state militia has occasion to be assigned duties outside of Illinois. Under the lower court's precedent, in all of these circumstances Illinois property is subject to attachment or garnishment, irrespective of the relationship or importance of those resources to Illinois in fulfilling its obligations to its citizens.

The *Hall* majority suggested, without deciding, that states could avoid such problems by refraining from depositing money in out-of-state banks. But as the above examples demonstrate, Illinois does not control the location of its assets when its property is temporarily possessed by third parties. Yet under the lower court's decision, any property held by a third party is potentially subject to attachment.

In addition to adversely affecting Illinois' ability to control its own property and revenues, the lower court's rule hinders the ability of the several states to enter into co-

operative agreements among themselves. Potential liability created by such agreements (for example, interstate agreements concerning disposal of hazardous waste) can be staggering. If the enforcement of a judgment against any party to such an agreement can occur in any state by seizure of another state's property located there, that state's inability to predict and allocate resources to pay such judgments in a rational manner may discourage legislative willingness to enter into the agreement in the first instance. The lower court's decision in this case poses precisely the kind of "substantial threat to cooperative federalism" about which the *Hall* Court was concerned. *Nevada v. Hall*, 440 U.S. at 424, n. 24.

IV.

THIS COURT SHOULD RECONSIDER ITS DECISION IN *NEVADA v. HALL*.

In *Nevada v. Hall, supra*, this Court, for the first time, ruled that one state of the union could assume jurisdiction in its own courts over another state. In his dissent, Justice Rehnquist said that he "fear[ed] the ultimate consequences of that holding". *Nevada v. Hall*, 440 U.S. at 427, 99 S.Ct. at 1191. The present action vividly discloses the consequences of the *Hall* decision, and the reasons why this Court should reconsider that decision.

Noting the "severe strains" the *Hall* decision could place on cooperative federalism, the dissent anticipated many of the problems presented by this case in its present posture.

> States in all likelihood will retaliate against one another for respectively abolishing the "sovereign immunity" doctrine. States' legal officers will be required to defend suits in all other States. States probably will decide to modify their tax collection and

> revenue systems in order to avoid the collection of judgments. . . . The Court's decision, thus, may force radical changes in the way States do business with one another, and it imposes, as well, financial and administrative burdens on the States themselves.

Nevada v. Hall, 440 U.S. at 429, 430, 99 S.Ct. at 1192, 1193.

These concerns are present here. The Illinois Attorney General was required to defend this action in the Iowa courts for eight years. The financial burdens imposed on Illinois as a result of the seizure of its income are manifest. Illinois may indeed be required to change its tax collection system to protect its revenue base.

Moreover, the lower court's ruling that collection may be secured by garnishment of state property held by third parties effectively precludes a debtor-state such as Illinois from protecting that property. That is, while a state may attempt to protect itself by maintaining the situs of its property, where possible, within its borders, it cannot in all instances determine, or even influence, the situs of its property when possessed by third parties.

As to the constitutional source of the sovereign immunity doctrine, the dissent found it "in a guarantee that is implied as an essential component of federalism." *Nevada v. Hall*, 440 U.S. at 430, 99 S.Ct. at 1193. Illinois submits that the structure of the Constitution does not permit one state to garnish the tax revenue of another, irrespective of the policies of either state. Such an assertion of extra-territorial power by one state against another is inconsistent with the very notion of a federal union. Because the enforcement problems presented here are an inevitable result of this Court's ruling in *Nevada v. Hall*, that decision should be reconsidered.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the decision and order of the Supreme Court of the State of Iowa.

Respectfully submitted,

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APPENDIX A

[FILED APRIL 13, 1988]
IN THE SUPREME COURT OF IOWA

92
87-446

RONALD STRUEBIN, et al.,

Appellees,

vs.

THE STATE OF ILLINOIS,

Appellant.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Judge.

Judgment debtor appeals from decision granting plaintiffs' petition for enforcement of judgment by garnishment. AFFIRMED.

Neil F. Hartigan, Attorney General of Illinois, and Robert E. Wagner, Special Assistant Attorney General of Illinois, for appellant.

Rand S. Wonio, Lane & Waterman, Davenport, for appellees.

Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ.

SCHULTZ, J.

The issue presented by this appeal is whether judgments entered by an Iowa District Court against the State of Illinois may be enforced by garnishment of tax revenues owed to Illinois by a corporation located in Iowa. We hold that under the facts presented, the judgments may be so enforced.

This case arises from a 1978 automobile accident which resulted in two wrongful death judgments against the State of Illinois for its negligence in maintaining the Interstate-80 bridge over the Mississippi River. Although the accident occurred in Iowa, Illinois had agreed to maintain that portion of the bridge under a contract between the states.

This case has been before us twice already. In *Struebin v. State*, 322 N.W.2d 84, 85-87 (Iowa), *cert. denied*, 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 933 (1982) (*Struebin* I), we held that constitutional principles did not bar an action against Illinois in our courts and refused to grant immunity as a matter of comity. The case went to trial and judgments totaling $118,800 were entered against Illinois. In *Struebin v. Illinois*, 383 N.W.2d 516 (Iowa 1986) (*Struebin* II), we addressed the issue of how those judgments should be enforced. We held that as a matter of comity we would not allow garnishment in Iowa at that time because the plaintiffs had not sought to enforce their judgments in Illinois. *Id.* at 520. We also stated in *Struebin* II, that our decision would not prejudice plaintiffs' return to our courts if they were unable to enforce the judgments in Illinois. *Id.*

After *Struebin* II, plaintiffs filed complaints to enforce their judgments in the Illinois Court of Claims, that state's forum for claims against it. Illinois moved to

dismiss the complaints on grounds that they were untimely. After five months passed with no action on the motions, plaintiffs filed a second petition for enforcement of their judgments in the Iowa District Court for Scott County. The district court granted the petition and ruled that the judgments could be enforced against the State of Illinois in the same manner as if it were a private nongovernmental litigant. Illinois appealed from this ruling. While the appeal was pending, the Illinois Court of Claims granted Illinois' motions to dismiss on grounds that plaintiffs' actions were not timely. We granted a limited remand to allow the district court to amend its findings of fact to include this ruling.

On this appeal, Illinois contends that the district court erred in ruling that plaintiffs could enforce their judgments by garnishment of tax revenues owed by an Illinois corporation located in Iowa. Initially, we reject plaintiffs' contention that this issue was decided in *Struebin* II. While it is true that issues decided on a prior appeal are the law of the case and may not be reconsidered on a subsequent appeal, *see Lawson v. Fordyce*, 237 Iowa 28, 32, 21 N.W.2d 69, 73 (1945), we have not yet addressed this issue. In *Struebin* II we stated:

> [W]e will not open our courts to consider plaintiffs' proceedings to collect the judgments by garnishment in Iowa until such time as they can allege and prove they were unable to secure payment of these judgments in the Illinois courts. This holding, of course, is without prejudice to plaintiffs' future return to the Iowa court system to secure payment of their judgments upon the pleading and proof above specified.

383 N.W.2d at 520. Although the arguments made on this appeal are virtually identical to arguments made in *Struebin* II, our disposition of the prior case made it unneces-

sary to decide the present issue. Therefore, the question is properly before us. To analyze the dispute we will first discuss whether Illinois' status as a sovereign state precludes the garnishment and then discuss whether we should extend such immunity as a matter of comity.

I. *Immunity.* Illinois contends that coequal sovereigns cannot seize one another's property. It maintains that its tax revenues are immune from execution or garnishment by the Iowa courts. We believe that the United States Supreme Court has resolved this issue in *Nevada v. Hall*, 440 U.S. 410, 99 S. Ct. 1182, 59 L. Ed. 2d 416 (1979). In *Hall*, the Court held that the State of Nevada was not immune from suit in California for injuries caused by a state employee's negligence within the State of California. *Id.* at 426, 99 S. Ct. at 1191, 59 L. Ed. 2d at 428 (nothing in federal constitution requires California to grant Nevada immunity from negligence claims). The Court traced the history of the sovereign immunity doctrine and concluded that "it affords no support for a claim of immunity in another sovereign's courts." *Id.* at 416, 99 S. Ct. at 1186, 59 L. Ed. 2d at 422. It further reasoned that such immunity would implicate concerns about the forum state's own sovereignty. *Id.* The Court also rejected arguments that the United States Constitution provided for such immunity in either article III, the eleventh amendment, or the full faith and credit clause. *Id.* at 421-24, 99 S. Ct. at 1188-90, 59 L. Ed. 2d at 425-27. Finally, the Court rejected a "penumbra" argument that the constitution implicitly establishes a union in which states must respect each other's sovereignty by extending immunity. *Id.* at 424-25, 99 S. Ct. at 1190, 59 L. Ed. 2d at 427-28.

The import of the *Hall* case to this appeal is that Illinois' claim of immunity must fail. We are urged to make a distinction between jurisdiction for purposes of obtain-

ing a judgment and jurisdiction for purposes of enforcing it. However, it is clear that such a distinction was not intended by the Court in *Hall*. While the majority did not expressly reject this distinction, the dissenters assumed that under the majority rule judgments against sister states could be enforced. Justice Blackmun makes the following observation:

> States probably will decide to modify their tax-collection and revenue systems in order to avoid the collection of judgments. In this very case, for example, Nevada evidently maintains cash balances in California banks to facilitate the collection of sales taxes from California corporations doing business in Nevada. Under the Court's decision, Nevada will have strong incentive to withdraw those balances and place them in Nevada banks so as to insulate itself from California judgments.

Id. at 429, 99 S. Ct. at 1192-93, 59 L. Ed. 2d at 430-31 (Blackmun, J., dissenting) (citation to pleadings omitted); *see also id.* at 443, 99 S. Ct. at 1199-200, 59 L. Ed. 2d at 439 (Rehnquist, J., dissenting) (decision will induce states to isolate assets from foreign judgments).

Illinois argues that *Hall* should not be applied to allow garnishment in this case because to do so would impose a substantial threat to our constitutional system of cooperative federalism. In so arguing, Illinois cites to a footnote in the Court's opinion where it stated that California's exercise of jurisdiction imposed no such threat. *Id.* at 424 n.24, 99 S. Ct. at 1190 n.24, 59 L. Ed. 2d at 427 n.24. We do not see a substantial threat to cooperative federalism in our decision. An example of where such a threat would exist is *Guarini v. New York*, 215 N.J. Super. 426, 521 A.2d 1362 (Ch. Div.), *aff'd*, 215 N.J. Super. 293, 521 A.2d 1294 (App. Div. 1986), *cert. denied*, 108 S. Ct. 71 (1987), where the language in this footnote was

used to distinguish *Hall*. In *Guarini*, citizens of New Jersey were challenging the authority of New York to exercise authority over two islands on the New Jersey side of the Hudson River. *Id.* at 429, 521 A.2d at 1364. New York had been granted this authority through an interstate compact with New Jersey. The court saw the action as a challenge to the governmental authority of New York and held that permitting the action would "violate principles of cooperative federalism." *Id.* at 438, 521 A.2d at 1368.

In this case the governmental authority of Illinois is not being litigated. We are not addressing the issue of whether Illinois can deny plaintiffs relief in its own court of claims. Rather, we are allowing our own courts to enforce a judgment entered in this state. The only potential threat to cooperative federalism in this case is the claim that Iowa cannot enforce its own judgments.

Illinois makes two other arguments in support of its immunity claim. We find neither one persuasive. Allowing garnishment of tax revenues is not an interference with Illinois' sovereign power to levy and distribute taxes. The power to tax has already been exercised and the funds garnished were already designated as tax revenue owed to Illinois. Execution and garnishment requires a specific identification of the judgment debtor's assets. Here, the particular assets happen to be tax revenues set aside but not yet paid. There is no interference with Illinois sovereign power to tax.

We also reject the argument that garnishment of the Illinois corporation violates due process by potentially subjecting it to double liability for the tax revenues. Iowa Code section 642.10 (1985), expressly provides that the corporation is exonerated from its liability to Illinois to the

extent it must pay under the garnishment. If Illinois seeks to recover this money from the corporation, its courts will be obligated to give full faith and credit to the Iowa discharge. *See Chicago, R.I. & Pac. Ry. v. Sturm*, 174 U.S. 710, 718, 19 S. Ct. 797, 800, 43 L. Ed. 1144, 1147 (1899). In *Sturm*, the Court held that a garnishee's discharge under Iowa law obligated a Kansas court to give the discharge the same effect it would have had in Iowa. *Id.* Illinois' own supreme court has recognized this principle as well. *See Taylor v. Taylor*, 44 Ill. 2d 139, 142-43, 254 N.E.2d 445, 447 (1969) (citing *Sturm*). Under these cases, double liability is not a risk.

In summary, Illinois has no right to immunity from enforcement of the judgments against it in this state.

II. *Comity.* While we are not required to grant immunity from garnishment to Illinois, we are free to do so as a matter of comity. In fact, we have previously refrained from exercising this jurisdiction to allow Illinois the chance to provide for enforcement in its own court of claim. *Struebin* II, 383 N.W.2d at 520. However, Illinois refused to allow enforcement by dismissing the actions as untimely. Under the facts of this case we will not, as a matter of comity, give effect to Illinois' refusal to enforce the judgment.

In *Struebin* I, we addressed the issue of whether a statutory limit on damages provided by Illinois law should apply to this dispute. We stated:

> Iowa's interest in full compensation outweighs Illinois' interest in extending its statutory limitation on recovery to its Iowa torts. Iowa's policy is a legitimate attribute of its own sovereignty.

322 N.W.2d at 87. This time around, Illinois would have us abandon our interest in full compensation for accident

victims in this state, in favor of its own interest in avoiding the untimely enforcement of judgments against it.[1] While Illinois is free to apply its own statute of limitations in its court of claims we conclude that we should not as a matter of comity apply it in our courts.

III. *Conclusion.* We conclude that the plaintiffs are free to proceed in accordance with the trial court ruling permitting them to garnish funds owed to the State of Illinois that are located within this state.

Plaintiffs have asked us to impose sanctions against the State of Illinois for taking a frivolous appeal. *See* Iowa R. Civ. P. 80(a). We do not believe sanctions are appropriate under these circumstances.

AFFIRMED.

[1] There is no dispute that the action to enforce is timely in Iowa.

APPENDIX B

[FILED JULY 21, 1982]
IN THE SUPREME COURT OF IOWA

250
66836

RONALD STRUEBIN, Ancillary Administrator of the Estate of Joel F. Struebin, deceased; KATHLEEN S. POTTER, Ancillary Administrator of the Estate of James K. Potter; and DAVENPORT BANK AND TRUST, Ancillary Administrator of both Estates,

Appellees,

vs.

STATE OF IOWA,

Appellee, and

STATE OF ILLINOIS,

Appellant.

Appeal from Scott District Court - Margaret S. Briles, Judge.

Appeal with permission by the State of Illinois from order overruling its special appearance in a tort suit. AFFIRMED.

Tyrone C. Fahner, Attorney General, and A. L. Zimmer, Assistant Attorney General, State of Illinois for appellant.

Rand S. Wonio of Lane and Waterman, Davenport, for appellees Struebin, Potter, and Davenport Bank and Trust.

Thomas J. Miller, Attorney General, and Robert J. Huber, Assistant Attorney General, for appellee State of Iowa.

Considered en banc.

McCORMICK, J.

The questions here are whether principles of constitutional law or comity required the trial court to sustain the special appearance of defendant State of Illinois in this wrongful death tort action. We granted interlocutory appeal of the court's order overruling the special appearance in order to decide these issues of first impression in Iowa. Because we find that the principles relied on by Illinois do not bar the action, we affirm the trial court.

Plaintiffs are the ancillary administrators of the estates of Joel F. Struebin and James K. Potter. They allege that the decedents were killed when a jeep they were occupying plummeted into the Mississippi River after skidding over a snow embankment covering a railing on the Iowa side of the Interstate 80 bridge near LeClaire. A contract between Iowa and Illinois required Illinois to maintain the bridge on behalf of both states. Iowa had a similar duty on the Interstate 74 bridge. Plaintiffs allege that Illinois is liable for the deaths on theories of negligence and nuisance based on the conditions that caused the accident. Iowa is also a defendant in the case.

In appearing specially, Illinois alleged that sovereign immunity precluded suit against it in an Iowa court. It also cited an Illinois statute requiring tort claims against the

state to be brought in the Illinois Court of Claims and imposing a $100,000 per person limit on recovery. *See* Ill. Rev. Stat. ch. 37, §§ 439.8 and 439.23 (1979). When the trial court overruled the special appearance, Illinois applied and obtained permission for the present appeal. We are called upon to decide only the jurisdictional dispute.

I. *The constitutional questions.* For the first two hundred years of this nation's existence it was generally assumed that the United States Constitution would not allow one state to be sued in the courts of another state. The assumption was based on the theory that this immunity was an attribute of state sovereignty that was preserved in the Constitution. *See Paulus v. South Dakota*, 58 N.D. 643, 227 N.W. 52 (1929); *Nathan v. Virginia*, 1 Dall. 77 (C.P. Philadelphia County Ct. 1781). In 1979, however, the Supreme Court held in *Nevada v. Hall*, 440 U.S. 410, 99 S. Ct. 1182, 59 L. Ed. 2d 416 (1979), that the assumption was unwarranted.

Hall was a negligence action brought in a California state court against the State of Nevada by persons who were severely injured in a collision on a California highway with an employee of Nevada acting within the scope of his employment. Although a Nevada statute waived sovereign immunity against Nevada tort claims, it limited recovery to $25,000 per claimant. The California court rejected Nevada's assertions that it was not amendable to suit in California and that, in any event, California was required to give full faith and credit to the Nevada statute limiting recovery. After the injured parties recovered a substantial judgment, the court of appeals affirmed and the California Supreme Court denied review. Nevada then successfully sought certiorari review in the U. S. Supreme Court. That Court found nothing in the understanding of the framers, the structure of the Constitution, article III,

the eleventh amendment, or the full faith and credit clause that required California to accord Nevada immunity from suit in California or to apply the Nevada statute.

As in *Hall*, it is argued in this case that the full faith and credit clause is a bar to suit. That provision requires full faith and credit "in each state to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. Art. IV, § 1. In *Hall*, the Court held that this clause does not require one state to apply another state's law in violation of its own legitimate public policy. 440 U.S. at 422, 99 S. Ct. at 1189, 59 L. Ed. 2d at 426. The Court characterized California's policy interest as "full protection of those who are injured on its highways through the negligence of both residents and nonresidents." *Id.* at 424, 99 S. Ct. at 1190, 59 L. Ed. 2d at 427.

Iowa has a similar policy, reflected in section 321.498, The Code, extending personal jurisdiction to nonresident motorists. The policy is also manifested in chapter 25A, which permits suits against the state for negligent maintenance of highways. *See Hunt v. State*, 252 N.W.2d 715, 717 (Iowa 1977). Iowa law permits full compensation.

Illinois seeks to distinguish the present case from *Hall* by pointing out that its duty to maintain the interstate bridge arose from a contract that it entered in its sovereign capacity in a spirit of cooperative federalism. It asserts that footnote 24 in *Hall* limits the holding to its unique facts, leaving intact an allegedly preexisting constitutional bar to state court jurisdiction over sister states where liability is alleged based on the sister state's exercise of a governmental function. Footnote 24 provides:

> California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism. Suits involving traf-

> fic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfill its own sovereign responsibilities. We have no occasion, in this case, to consider whether different state policies, either of California or Nevada, might require a different analysis or a different result.

We see several flaws in Illinois' position. First, the *Hall* case enunciates for the first time an authoritative general principle that the Constitution does not mandate interstate comity. It demonstrates that the prior contrary assumption was unwarranted. The case does not merely carve out an exception to a general principle of immunity. Second, the footnote points out that the *Hall* facts did not threaten Nevada's sovereign prerogatives and responsibilities. It does not necessarily limit the holding to the *Hall* facts. Finally, the footnote merely reserves the question of a different analysis or result where different state policies are involved. It does not suggest that an exception must be made where, as here, a threat to interstate cooperation is asserted. We do not think that allowing Illinois to be sued in Iowa courts for torts committed in Iowa constitutes a "substantial threat to our constitutional system of cooperative federalism."

Illinois does not and could not claim a sovereign right to be negligent in carrying out its contractual responsibilities in maintaining the Interstate 80 bridge. The fact that it accepted the responsibilities as a sovereign does not make them any less obligatory. Moreover the only substantive Illinois policy involved is reflected in its statute that would limit recovery if the action were brought in Illinois. This is the same kind of policy as was urged by Nevada in *Hall*. Under *Hall* this policy is not of sufficient magnitude to override Iowa's legitimate interest in giving full access and protection in Iowa courts to those in-

jured on Iowa highways. No substantial harm to Illinois' sovereignty appears. Illinois is more impressed with the views of the dissenting justices and critics of *Hall* than with the majority holding. We believe, however, the majority holding plainly controls here.

Other courts have uniformly reached the same conclusion in various contexts, some of which are analogous to this case. *See Daughtry v. Arlington County, Virginia,* 490 F. Supp. 307 (D.D.C. 1980) (District of Columbia courts not required to recognize sovereign immunity of Virginia in suit based on alleged misconduct of police exercising Virginia police powers); *Peterson v. Texas,* 635 P.2d 241 (Colo. Ct. App. 1981) (Texas not immune from Colorado suit based on alleged tort of youth participating in Colorado in a Texas juvenile rehabilitation program); *The Carlson Corporation v. University of Vermont,* Mass Adv. Sheets (1980) 659 (Mass. March 6, 1980) (sovereign immunity of Vermont not a bar to breach of contract suit against Vermont state university in Massachusetts); *Wendt v. County of Osceloa, Iowa,* 289 N.W.2d 67 (Minn. 1979) (Iowa political subdivision not immune from suit in Minnesota court for alleged negligent failure to post adequate road signs and barricades); *Ehrlich-Bober & Co. v. University of Houston,* 49 N.Y.2d 574, 427 N.Y.S.2d 604, 404 N.E.2d 726 (1980) (another university contract case).

We conclude that the trial court was correct in overruling Illinois' special appearance on the full faith and credit ground.

Illinois also alleges the trial court ruling denies it equal protection of the law under U.S. Const. Amend. XIV. This occurs, it argues, because Iowa could not be sued in its own courts under the tort claims statute without prior exhaustion of administrative remedies. *See § 25A.5; Jones*

v. Bowers, 256 N.W.2d 233 (Iowa 1977). Illinois asserts it is treated unequally because it does not receive the benefit of the exhaustion requirement. Passing the issue whether error was presented on this contention, we hold that it is without merit. A state is not a "person" for purposes of fourteenth amendment protection. *Pennsylvania v. New Jersey*, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976).

II. *The comity question.* Iowa is nevertheless free to close its courts to suits against a sister state as a matter of comity rather than constitutional command. *See Hall*, 440 U.S. at 426-27, 99 S. Ct. at 1190-91, 59 L. Ed. 2d at 429. Comity is a doctrine under which courts will give effect to the law of another state as a matter of deference and respect rather than of duty. *Jacobsen v. Saner*, 247 Iowa 191, 193, 72 N.W.2d 900, 901 (1955).

Illinois alleges that Iowa and Illinois have a similar view toward sovereign immunity which should encourage Iowa to respect its desire to have litigation against it brought only in the Illinois Court of Claims, as provided in its statute. Assuming the states do have a common view of the doctrine, no basis appears for believing Illinois' sovereignty will not be sufficiently protected in Iowa courts. *See* Comment, *Nevada v. Hall: Sovereign Immunity, Federalism and Compromising Relations Between Sister States*, 1980 Utah L. Rev. 395, 410. Illinois acknowledges its statute permits an action against the state for negligence in road maintenance.

The only material difference asserted by Illinois is its statutory limitation on recovery. The Illinois policy limiting the amount of recovery against the state for torts in Illinois contrasts with the Iowa policy permitting full compensation to those injured on its highways by the negli-

gence of nonresidents as well as residents. We believe Iowa's interest in full compensation outweighs Illinois' interest in extending its statutory limitation on recovery to its Iowa torts. Iowa's policy is a legitimate attribute of its own sovereignty. Therefore we conclude that the trial court was also correct in overruling the special appearance on the comity ground.

AFFIRMED.

APPENDIX C

[FILED MARCH 19, 1986]
IN THE SUPREME COURT OF IOWA

1
84-1180

RONALD STRUEBIN, Ancillary Administrator of the Estate of Joel F. Struebin; KATHLEEN S. POTTER, Ancillary Administrator of the Estate of JAMES K. POTTER; and DAVENPORT BANK and TRUST, Ancillary Administrator of both Estates,

Appellants,

vs.

THE STATE OF ILLINOIS and
CATERPILLAR TRACTOR COMPANY,

Appellees.

Appeal from the Iowa District Court for Scott County, Margaret Briles, Judge.

Plaintiffs appeal from trial court's order sustaining a special appearance by defendant Illinois in a garnishment proceeding to enforce a prior judgment. AFFIRMED.

Rand S. Wonio of Lane and Waterman, Davenport, for appellants.

Robert E. Wagner, Illinois Assistant Attorney General, Springfield, Illinois, for appellee State of Illinois.

B. Douglas Stephens, Jr., and Mark A. Tarnow of Van Der Kamp, Cleaver & Stojan P.C., Rock Island, Illinois, for appellee Caterpillar Tractor Company.

Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz, and Wolle, JJ.

REYNOLDSON, C.J.

This appeal involves an unfortunate sequela flowing from our decision in *Struebin v. Illinois*, 322 N.W.2d 84 (Iowa) (*Struebin I*), *cert. denied*, 459 U.S. 1087 (1982). In that interlocutory appeal we held the full faith and credit clause of the United States Constitution did not prohibit suit against the State of Illinois in an Iowa court for death damages allegedly caused by its negligence in maintaining the Iowa portion of an interstate bridge pursuant to contract between the two states. *Id.* at 86-87.

The case, involving two deaths, was returned to district court where it was tried to a jury. Plaintiffs' decedents were found seventy percent at fault and defendant Illinois was found thirty percent at fault. Judgments on the verdicts were then entered against Illinois in the amounts of $57,070.59 and $61,729.41.

When these judgments were not paid, plaintiffs caused general writ of execution to issue to the Scott County sheriff with a direction to serve notice of garnishment, with interrogatories, on Caterpillar Tractor Company. That Illinois corporation's Iowa plant employs a number of Illinois residents, and Illinois law requires it to withhold and remit that state's income tax from each Illinois employee.

The above information may be garnered from Caterpillar's answers to the garnishment interrogatories, which also acknowledged that "[a]s of the date of service of the

Notice of Garnishment, March 13, 1984, Caterpillar Tractor Co. was obligated to pay the Illinois Department of Revenue taxes deducted and withheld [from employees residing in Illinois] in the amount of $15,000.00." At the same time, Caterpillar claimed the described funds were exempt from garnishment for various reasons.

Plaintiffs responded with "Controverting Answers to Garnishment Interrogatories." A copy of this pleading, as well as the trial notice of the proceedings, were personally served on the Illinois Attorney General, in Illinois, more than ten days prior to trial. *See* Iowa Code § 642.14 (1983). The latter responded with a special appearance attacking trial court's jurisdiction on several grounds. The court was persuaded the property sought to be seized was used for a public purpose and "execution will not run against a sovereign state." The court then sustained the special appearance and dismissed the garnishment proceeding. Plaintiffs' timely appeal brings this issue of first impression before us for resolution.

I. Illinois first asserts trial court was without subject matter jurisdiction over it in the garnishment proceeding, because no proper service was had on that state. Illinois relies on two of our early decisions, *Wise v. Rothschild Brothers*, 67 Iowa 84, 24 N.W. 603 (1885), and *Williams v. Williams*, 61 Iowa 612, 16 N.W. 718 (1883), which indeed state that in absence of notice on the principal defendant trial court is without "jurisdiction" to render judgment against the garnishee. *Wise*, 67 Iowa at 86, 24 N.W. 2d at 604; *Williams*, 61 Iowa at 615, 16 N.W. at 720.

Subsequent opinions of this court, however, made clear that garnishment actions in this jurisdiction, involving a nonresident, are in rem, and that trial court has subject matter jurisdiction when the fund, debt, or other obligation of the nonresident, in the hands of the garnishee, is

properly attached. *See, e.g., Scott v. Wamsley*, 215 Iowa 1409, 1412, 245 N.W. 214, 215 (1932); *Leech v. Brown*, 172 Iowa 182, 184, 154 N.W. 440, 441 (1915).

> [T]he notice [to the principal defendant] is not jurisdictional in the sense that the proceedings are void, or nugatory until such notice is given. The garnishee cannot ordinarily obtain a discharge because no notice is given to the principal defendant. He may insist, however, that no judgment can properly be rendered against him until such notice is given.

J. J. Smith Lumber Co. v. Scott County Garbage Reducing & Fuel Co., 149 Iowa 272, 276, 128 N.W. 389, 391 (1910). The provision for notice on the principal defendant was not added to our statutory law until 1880, *see* 1880 Iowa Acts ch. 58.[1] Its purpose is to permit that party to intervene and protect his or her rights, and also is intended to protect the garnishee. *Hubbard v. Des Moines Independent Community School District*, 323 N.W.2d 238, 241 (Iowa 1982).

Although modern terminology suggests a subclassification of this proceeding as quasi in rem, *see Mullenger v. Clause*, 178 N.W.2d 420, 425 (Iowa 1970); *Hansen v. Haagensen*, 178 N.W.2d 325, 326 (Iowa 1970), *cert. denied*, 401 U.S. 912 (1971); Restatement (Second) of Judgments §§ 6, 8 (1982), the basic requirement remains that the principal defendant need only be provided a notice that is reasonably calculated to give the defendant knowledge of the proceeding and an opportunity to be heard. *Mullenger*,

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[1] Iowa Code § 642-14 (1983) provides:

> Judgment against the garnishee shall not be entered until the principal defendant shall have had ten days' notice of the garnishment proceedings, to be served in the same manner as original notices.

178 N.W.2d at 424-25. Further, the underlying contract relating to the maintenance of the interstate bridge, the tort committed in Iowa, and the resulting Iowa judgments are more than adequate to satisfy the minimum contacts standard of *Shaffer v. Heitner*, 433 U.S. 186, 216, 97 S. Ct. 2569, 2586, 53 L. Ed. 2d 683, 705 (1977).

Plaintiffs here do not seek in personam judgments against Illinois; that was the result of *Struebin I*. We thus are not confronted with the jurisdictional principles required for personal judgments against defendants that we have applied in the analysis of cases like *Martin v. Ju-Li Corp.*, 332 N.W.2d 871, 874 (Iowa 1983), relied on by Illinois.

Iowa Code section 642.14 (1983) simply provides that the principal defendant must be given notice before judgment could be entered against the *garnishee*, and further provides it shall be served "in the same manner as original notices." We think by this language the legislature sought only to secure a type of service reasonably designed to insure that the principal defendant had actual knowledge of the garnishment proceeding. *See Propper v. Clark*, 337 U.S. 472, 488, 69 S. Ct. 1333, 1342, 93 L. Ed. 1480, 1494 (1949).

Here the necessary papers were served personally on the Illinois Attorney General in the same manner as an original notice, and proper return was filed in the garnishment proceeding. Illinois, however, while conceding its attorney general is its chief legal officer, contends he "is not authorized by the Illinois Constitution nor statutes to accept service of process on behalf of the State of Illinois." Illinois further relies on *Beauchamp v. Iowa District Court*, 328 N.W.2d 527 (Iowa 1983), for the proposition that service upon an attorney does not give a district court personal jurisdiction over a defendant. *Id.* at 528.

Beauchamp, however, involved service on a party's attorney in a collateral contempt proceeding. *Id.* That case is not controlling when, as here, the nonresident is a public body that operates only through its officers.

Notably, Illinois fails to point out who in that state should have received notice of the garnishment proceeding. The attorney general clearly is one of the officers in the executive branch. Ill. Const. art. V, § 1. The Illinois Constitution provides that the attorney general "shall be the *legal officer* of the State." Ill. Const. art. V, § 15 (emphasis added). *See also Gust K. Newberg, Inc. v. Illinois State Toll Highway Authority*, 98 Ill. 2d 58, 66, 456 N.E.2d 50, 55 (1983). The Illinois Attorney General is the proper officer to receive a notice of intent to commence an action against Illinois in the state's court of claims. *See* Ill. Ann. Stat. ch. 37, § 439.22-1 (Smith-Hurd Supp. 1985).

Service on the Illinois Attorney General obviously apprised that state of the pending garnishment proceeding. The statutory purpose of Iowa Code section 642.14 was fulfilled. We find trial court has jurisdiction to proceed with the garnishment action. We thus are required to consider another contention made by Illinois which we consider controlling at this time.

II. We noted in *Struebin I* that Iowa remains free to close its courts to suits against a sister state as a matter of comity, even though such policy, under *Nevada v. Hall*, 440 U.S. 410, 99 S. Ct. 1182, 59 L. Ed. 2d 416 (1979), is not dictated by constitutional command. 322 N.W.2d at 87. Though the present proceeding is not a direct action against Illinois, it asserts that as a matter of comity and cooperative federalism Iowa should stay its hand in enforcing plaintiffs' judgment against the Illinois

tax revenues that are the subject matter of this dispute. The Illinois Assistant Attorney General, in his recorded argument on the submission of this appeal, asserted Illinois is not flaunting the Iowa judgments recovered in an Iowa court trial arising out of the tort committed by Illinois in Iowa. Rather, he pointed out that Illinois is not unwilling to pay the judgment, and stated the vehicle and mechanism provided for such payment under Illinois law is through the Illinois Court of Claims.

Plaintiffs concede they have not attempted to enforce the Iowa judgment in Illinois. "A judgment entered in one State must be respected in another [under the full faith and credit clause of the Constitution] provided that the first State has jurisdiction over the parties and the subject matter." *Hall*, 440 U.S. at 421, 99 S. Ct. at 1188, 59 L. Ed. 2d at 425; *see National Equipment Rental, Ltd. v. Estherville Ford, Inc.*, 313 N.W.2d 538, 541 (Iowa 1981). The general rule is "that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Durfee v. Duke*, 375 U.S. 106, 111, 84 S. Ct. 242, 245, 11 L. Ed. 2d 186, 191 (1963).

In *Struebin I*, we held Iowa courts had jurisdiction over Illinois when that state committed a tort within Iowa, relying on *Nevada v. Hall*, 322 N.W.2d at 86-87. Other state courts confronted with similar circumstances have interpreted *Hall* accordingly. *See, e.g., Peterson v. Texas*, 635 P.2d 241, 243 (Colo. App. 1981); *Wendt v. County of Osceola, Iowa*, 289 N.W.2d 67, 69 (Minn. 1979); *Ehrlich-Bober & Co. v. University of Houston*, 49 N.Y.2d 574, 579-83, 404 N.E.2d 726, 729-31, 427 N.Y.S.2d 604, 607-09 (1980); *Newberry v. Georgia Department of Industry &*

Trade, 283 S.C. 312, ____, 322 S.E.2d 212, 213-14 (S.C. App. 1984), *overruled on other grounds, McCall v. Batson*, ____ S.C. ____, ____, 329 S.E.2d 741, 745-46 (1985). Even Illinois has given some indication that the doctrine of sovereign immunity, while protecting a state from suits in its own courts, may no longer protect that state from suit in a sister state. *See City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457, 461, 451 N.E.2d 874, 876 (1983). The question of jurisdiction over Illinois to enter the original judgment was fully and fairly litigated in *Struebin I*. Moreover, the merits of the cause were fully litigated in the subsequent trial that resulted in the judgments. Under *Durfee*, we have no reason to assume Illinois would not honor the Iowa judgments if plaintiffs attempt to enforce them in Illinois. *See* 375 U.S. at 111, 84 S. Ct. at 245, 11 L. Ed. 2d at 191.

Illinois, of course, is not required to enforce the plaintiffs' judgments if to do so would clearly offend its fundamental public policies. *Hall*, 440 U.S. at 421-22, 99 S. Ct. at 1189, 59 L. Ed. 2d at 426. In the submission of this appeal the Assistant Attorney General made no claim enforcement of these judgments would offend Illinois' fundamental policies. Illinois has no policy against compensating tort victims of that state's negligence. To the contrary, Illinois has a policy favoring compensation, as demonstrated by the framework of its court of claims. *See* Ill. Ann. Stat. ch. 37, § 439.8(d) (Smith-Hurd Supp. 1985).

Plaintiffs argue they cannot enforce their judgment in Illinois because that state requires potential claimants against the state to file a notice of intent with the attorney general and court of claims within six months of injury or wrongful death. *See* Ill. Ann. Stat. ch. 37, § 439.22-1, .22-2 (Smith-Hurd Supp. 1978) (The time period was extended to one year in 1983, *see* 1983 Ill. Laws 83-

865, § 2.). Plaintiffs did not file such notices. Illinois, on submission of this appeal, did not suggest this requirement was applicable in this situation. Section 439.22-1 only requires that those persons who are about to commence an action in the court of claims against the state of Illinois for damages flowing from an injury or wrongful death file a notice within the time period set out. Ill. Ann. Stat. ch. 37, § 439.22-1 (Smith-Hurd Supp. 1978). Here, plaintiffs have litigated their claims and obtained final judgments enforceable in a sister state under the full faith and credit clause of the Constitution. *See* U.S. Const. art. IV, § 1. Moreover, Illinois has adopted the Uniform Enforcement of Foreign Judgments Act to facilitate the enforcement. *See* Ill. Ann. Stat. ch. 110, §§ 12-601 - 12-617 (Smith-Hurd 1984). We are unpersuaded that plaintiffs would be unable to collect their judgments in Illinois.

We therefore hold, as a matter of comity and cooperative federalism, we will not open our courts to consider plaintiffs' proceedings to collect the judgments by garnishment in Iowa until such time as they can allege and prove they were unable to secure payment of these judgments in the Illinois courts. This holding, of course, is without prejudice to plaintiffs' future return to the Iowa court system to secure payment of their judgments upon the pleading and proof above specified. At this time, therefore, the district court dismissal of this garnishment action shall stand affirmed, although on different grounds than those relied on by that court.

AFFIRMED.

(2)

No. 88-88

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

STATE OF ILLINOIS,
Petitioner,

vs.

RONALD STRUEBIN, Ancillary Administrator
of the Estate of Joel F. Struebin, Deceased;
KATHLEEN S. POTTER, Ancillary Administrator
of the Estate of James K. Potter; and
DAVENPORT BANK AND TRUST,
Ancillary Administrator of Both Estates,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

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No. 88-88

IN THE

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

STATEMENT OF THE CASE

Ronald Struebin and Kathleen Potter are the administrators of the estates of Joel Struebin and James Potter who died on December 8, 1978 when their vehicle skidded on the icy surface of the Interstate 80 bridge over the Mississippi River. The vehicle went over the bridge railing and plunged into the river below. Illinois was responsible for maintaining the bridge by virtue of an interstate compact with Illinois.

On December 5, 1980, plaintiffs Struebin and Potter sued the State of Illinois in an amended petition in the Iowa courts. The State of Illinois appeared specially, claiming that it had sovereign immunity from this suit in the Iowa courts. The state trial court overruled the special appearance and Illinois appealed to the Iowa Supreme Court. The Iowa Supreme Court rejected Illinois' assertion that it was immune from suit in Iowa, relying upon this court's decision in *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979). *Struebin v. State*, 322 N.W.2d 84 (Iowa 1982).

The State of Illinois filed a Petition for Writ of Certiorari, which was denied by this court. *The State of Illinois v. Struebin, et al.*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982).

The case was returned to the state trial court for a three and one-half week jury trial. The jury returned verdicts against the State of Illinois and judgments were entered thereon in the total amount of approximately $118,000.00.

When Illinois did not pay the judgments, plaintiffs sought to enforce their judgments by the issuance of a writ of general execution with a direction to serve notice of garnishment upon Caterpiller Tractor Company. Plaintiffs sought to garnish Illinois withholding taxes deducted from compensation paid at this Iowa plant to employees who were Illinois residents. Illinois again appeared specially, claiming sovereign immunity from execution and garnishment of its property located in Iowa. The trial court sustained this special appearance and dismissed the garnishment proceedings. Plaintiffs then appealed to the Iowa Supreme Court. During oral argument before the Iowa Supreme Court, the Illinois Assistant Attorney General pointed out that Illinois was not unwilling to pay the judgments, and he stated that the vehicle and mechanism provided for such payment under Illinois law was through the Illinois Court of Claims. *Struebin v. State of Ill.*, 383 N.W.2d 516, 519 (Iowa

1986). The Iowa Supreme Court upheld the dismissal of the garnishment proceedings, but on wholly different grounds than those utilized by the trial court. The Iowa Supreme Court concluded, as follows:

> "We therefore hold, as a matter of comity and cooperative federalism, we will not open our courts to consider plaintiffs' proceedings to collect the judgments by garnishment in Iowa until such time as they can allege and prove they were unable to secure payment of these judgments in the Illinois courts. This holding, of course, is without prejudice to plaintiffs' future return to the Iowa court system to secure payment of their judgments upon the pleading and proof above specified." *Id.* at 520.

Plaintiffs filed Complaints with the Illinois Court of Claims on April 18, 1986. On July 18, 1986, the Illinois Attorney General filed Motions to Dismiss these complaints, alleging that Plaintiffs had failed to timely file notice within prescribed periods after the date of death of the decedents. Plaintiffs made several requests to the Illinois Court of Claims for rulings on the motions, but received no reply. On December 12, 1986, Plaintiffs filed a Petition for Enforcement of Judgment in the Iowa courts. The Illinois Court of Claims subsequently granted the state's motion and dismissed the claims. The trial court granted this Petition and ordered that Plaintiffs could secure payment of their judgment in any manner that they could if the State of Illinois were a private, non-governmental litigant.

Illinois again appealed to the Iowa Supreme court, again contending that it had sovereign immunity from statutory collection procedures. The Iowa Supreme Court rejected Illinois' claim of sovereign immunity and concluded that Plaintiffs were free to garnish funds owed to the State of Illinois that are located within the State of Iowa. *Struebin v. State of Illinois*, 421 N.W.2d 874 (Iowa 1988).

ARGUMENT

I.

THE IOWA SUPREME COURT DID NOT MISINTERPRET OR MISAPPLY NEVADA V. HALL.

It is Illinois which has both misinterpreted and misapplied the decision in *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979), not the Iowa Supreme Court. In *Hall, supra*, the United States Supreme Court held that the State of Nevada was not immune from suit in California for injuries caused by a state employee's negligence within the State of California. 440 U.S. at 426, 99 S.Ct. at 1191, 59 L.Ed.2d at 428. The Court held that there was nothing in the federal constitution requiring California to grant Nevada immunity from negligence claims.

The court discussed the history of the so-called sovereign immunity doctrine and concluded that "it affords no support for a claim of immunity in another sovereign's courts." 440 U.S. at 416, 99 S.Ct. at 1186, 59 L.Ed.2d at 422.

The Court also rejected Nevada's argument that the United States Constitution provided for such immunity in either Article III, the Eleventh Amendment, or the Full Faith and Credit Clause. 440 U.S. at 421-24, 99 S.Ct. at 1188-90, 59 L.Ed.2d at 425-27. Furthermore, the Court rejected the claim that the constitution implicitly established a union in which states must respect each other's sovereignty by extending such immunity. 440 U.S. at 424-25, 99 S.Ct. at 1190, 59 L.Ed.2d at 427-28.

The Court did not make any distinction between jurisdiction for purposes of obtaining a judgment and jurisdiction for purposes of enforcing that judgment. Both the majority and the dissenters in *Hall, supra*, foresaw an attempt to avoid the enforcement of a judgment rendered against a sister state. In footnote 12, the majority said:

> "12. Were it an independent sovereign, Nevada might choose to withdraw its money from California banks, or to readjust its own rules as to California's amenability to suit in the Nevada courts. And it might refuse to allow this judgment to be enforced in its courts. But it could not, absent California's consent and absent whatever protection is conferred by the United States Constitution, invoke any higher authority to enforce rules of interstate comity and to stop California from asserting jurisdiction. For to do so would be wholly at odds with the sovereignty of California." 440 U.S. at 417, 99 S.Ct. at 1187, 59 L.Ed.2d at 423.

The *Hall, supra*, dissenters felt that the broad holding of the majority would place severe strains on our system of cooperative federalism. They said:

> "States probably will decide to modify their tax-collection and revenue systems in order to avoid the collection of judgments. In this very case, for example, Nevada evidently maintains cash balances in California banks to facilitate the collection of sales taxes from California corporations doing business in Nevada. Under the court's decision, Nevada will have strong incentive to withdraw those balances and place them in Nevada banks so as to insulate itself from California judgments." 440 U.S. at 429, 99 S.Ct. at 1192-93, 59 L.Ed.2d at 430-31 (Blackmun, J., dissenting). See also 440 U.S. at 443, 99 S.Ct. at 1199-1200, 59 L.Ed.2d at 439 (Rehnquist, J., dissenting) (decision will induce states to isolate assets from foreign judgments).

The argument by Illinois that the garnishee, Caterpiller Tractor Company, could be liable in two different states for the same obligation, is also incorrect. Iowa Code §642.10 (1985), expressly provides that such a corporation is exonerated from its liablility to Illinois to the extent it must pay under the garnishment. Should Illinois seek to recover this money from the corporation after the corporation pays under this garnishment, Il-

linois courts would be obligated to give full faith and credit to the Iowa garnishment discharge. In *Chicago, R.I. & Pac. Ry. v. Strum*, 174 U.S. 710, 718, 19 S.Ct. 797, 800, 43 L.Ed. 1144, 1147 (1899), the Court held that a garnishee's discharge under Iowa law required a Kansas court to give that discharge the same effect it would have had in Iowa. The Supreme Court of Illinois has also recognized this principle. *Taylor v. Taylor*, 44 Ill.2d 139, 142-43, 254 N.E.2d 445, 447 (1969). Double liability to Caterpiller Tractor Company is not a risk under these cases.

Illinois claims in this Petition that the relevant policies of Iowa and Illinois are the same. This is totally incorrect. The Supreme Court of Iowa refused to grant Illinois immunity from garnishment because to do so would be to have Iowa abandon its interest in full compensation for accident victims in the State of Iowa. Furthermore, to grant immunity from garnishment would be an abandonment of Iowa's interest in enforcing judgments rendered in its courts. The interests of Illinois are to extend its statutory limitation on recovery and to refuse to enforce the judgment rendered in the Iowa courts as being untimely under its court of claims act.

The refusal by Iowa to abandon its interests in full compensation for accident victims was the linchpin of its decision in the first appeal of this case. *Struebin v. State*, 322 N.W.2d 84, 87 (Iowa 1982). The United States Supreme Court denied Certiorari of that decision. *Struebin v. State*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982).

In the most recent opinion by the Iowa Supreme Court, that court decided that Illinois might be free to apply its own statute of limitations in its court of claims, but that Iowa should not as a matter of comity apply it in Iowa courts, especially where there was is no dispute that the action to enforce was timely in Iowa. Thus, the state policies at issue are not the same, as is contended by Illinois.

II.

THE DECISION OF THE IOWA SUPREME COURT DOES NOT SUBSTANTIALLY INTERFERE WITH ILLINOIS' ABILITY TO PERFORM ITS SOVEREIGN GOVERNMENTAL FUNCTIONS.

Illinois also claims that to permit Appellees to garnish its state tax withholding will interfere with the ability of Illinois to exercise a "purely governmental function - removing snow from public roadways."

This is exactly the same argument made by Illinois when it originally appeared specially in this case in 1980. (See Petition for Writ of Certiorari - Appendix B-4 through 6) This court has already denied Certiorari on that basis.

There is very little distinction between the factual basis of liability in *Hall, supra*, and in this case. The question in Hall was whether a Nevada state employee drove his car in California in a negligent manner. The question in *Struebin* is whether an Illinois state employee maintained the interstate bridge in a negligent manner. It is spurious to argue that driving a snow plow is any more a "sovereign obligation" than driving a state car on state business. No "different state policies" as contemplated by Footnote 24 of the *Hall* decision are involved. 440 U.S. at 424, 99 S.Ct. at 1190, 59 L.Ed.2d at 427.

III.

PERMITTING GARNISHMENT HERE DOES NOT POSE A SUBSTANTIAL THREAT TO COOPERATIVE FEDERALISM.

Illinois claims that its sovereign power to levy and distribute taxes will be interfered with by this garnishment. This is also incorrect. The power to tax has already been exercised by Illinois and the funds garnished were already designated as tax revenue owed to Illinois. Iowa is not challenging the governmental authority of Illinois. Iowa is not saying that Illinois can not

deny plaintiffs relief in its own court of claims. What the Iowa Supreme Court is doing is permitting its own courts to enforce a judgment entered in Iowa. The only potential threat to cooperative federalism is the claim by Illinois that Iowa may not enforce its own judgments.

The Iowa Supreme Court gave an example of where such a substantial threat to cooperative federalism would exist. The court cited *Guarini v. New York*, 215 N.J. Super. 426, 521 A.2d 1362 (Ch. Div.), *aff'd*, 215 N.J. Super. 293, 521 A.2d 1294 (App.Div. 1986), *cert. denied*, 108 S.Ct. 71 (1987). In that case, citizens of New Jersey were challenging the authority of New York to exercise authority over two islands on the New Jersey side of the Hudson River. New York had been granted that authority through an interstate compact with New Jersey. The court saw the action as a challenge to the governmental authority of New York and held that permitting the action would, indeed, violate principles of cooperative federalism.

It is difficult to imagine how enforcement of a $118,000.00 judgment can pose a substantial threat to cooperative federalism or to the ability of Illinois to function as a sovereign entity.

Illinois is attempting to paint this case as some kind of collision between the States of Iowa and Illinois. This is a mischaracterization. The Iowa courts are merely permitting private litigants, who obtained jurisdiction over Illinois, to enforce a money judgment that was obtained pursuant to that jurisdiction.

IV.

THIS COURT SHOULD NOT RECONSIDER ITS DECISION IN NEVADA V. HALL.

Illinois contends that this case is an example of the "severe strains" on the federal system that were mentioned in a dissent in *Nevada v. Hall*, 440 U.S. at 427, 99 S.Ct. at 1191. Illinois ap-

pears to lament that such strains include the fact that its Attorney General has been required to defend this action in the Iowa courts for eight years. (Petition for Writ p. 15) It is difficult to comprehend how Illinois can make such an argument. It is the plaintiffs who have been subjected to endless litigation by the intransigence of Illinois. The plaintiffs in this case sued Illinois in 1980 in reliance upon the Supreme Court decision in *Nevada v. Hall, supra.* Since that time, these litigants have been subjected to three appeals in the Iowa Supreme Court, a three and one-half week jury trial which established Illinois' liability, a claim that was rejected in the Illinois Court of Claims even though the Illinois Assistant Attorney General told the Iowa Supreme Court that they would not resist payment in that court, and now two attempts to appeal this case before the United States Supreme Court.

The decision in *Nevada v. Hall, supra*, has been followed in a multitude of jurisdictions. *Wendt v. County of Osceola, Iowa*, 289 N.W.2d 67 (Minn. 1979); *Daughtry v. Arlington County, Va.*, 490 F.Supp. 307 (D.C.D.C. 1980); *Ehrlich-Boeber & Co., Inc. v. Univ. of Houston*, 427 N.Y.S.2d 599, 49 N.Y.2d 574, 404 N.E.2d 726 (1980); *Peterson v. Texas*, 635 P.2d 241 (Colo. Ct. App. 1981); *Mianecki v. Second Judicial Dist. Ct.*, 99 Nev. 93, 658 P.2d 422, *cert. denied*, 464 U.S. 806, 104 S.Ct. 195, 78 L.Ed.2d 171 (1983); *Biscoe v. Arlington County*, 738 F.2d 1352 (D.C.Cir. 1984); *cert. denied*, 469 U.S. 1159, 105 S.Ct. 909, 83 L.Ed.2d 923 (1985); *Skipper v. Prince George's County*, 637 F.Supp. 638 (D.C.D.C. 1986).

Certiorari has been denied in three of these cases. *Struebin v. State*, 322 N.W.2d 84 (Iowa 1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982); *Mianecki v. Second Judicial Dist. Ct., supra, cert. denied*, 464 U.S. 806, 104 S.Ct. 195, 78 L.Ed.2d 171 (1983); *Biscoe v. Arlington County, supra*, 469 U.S. 1159, 105 S.Ct. 909, 83 L.Ed.2d 923 (1985). The mere fact that a state is now resisting the payment of a judgment obtained pursuant to *Nevada v. Hall* is insufficient reason for the grant of the Writ of Certiorari.

CONCLUSION

There are no special or important reasons for the Court to exercise its discretion and grant review on Writ of Certiorari. This is not a state court decision on an important question of federal law which has not been, but should be, settled by this Court. All pertinent questions in this case were decided by *Nevada v. Hall*. The Petition for a Writ of Certiorari should be denied.

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PROOF OF SERVICE

I, Robert V.P. Waterman, do affirm and declare that I am counsel for Ronald Struebin and Kathleen Potter, administrators of the estates of Joel Struebin and James Potter, and Davenport Bank and Trust, Ancillary Administrators for Both Estates. and that three (3) copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari were served on all of the parties to this appeal by mailing three (3) copies thereof to the respective parties or counsel for said parties, as follows:

Robert E. Wagner
Special Assistant Attorney General
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P.O. Box 1858
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Mailing was made by depositing copies in a United States Postal Service mail box, with first class postage pre-paid in envelopes addressed to the above addressees. This Proof of Service is made in accordance with the requirements of Rule 28.3 and 28.5, Rules of the Supreme Court of the United States.

Robert V.P. Waterman
Attorney for Ronald Struebin and
Kathleen Potter and Davenport
Bank and Trust